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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1942

No. 965

SAMUEL B. JOHNSTON,

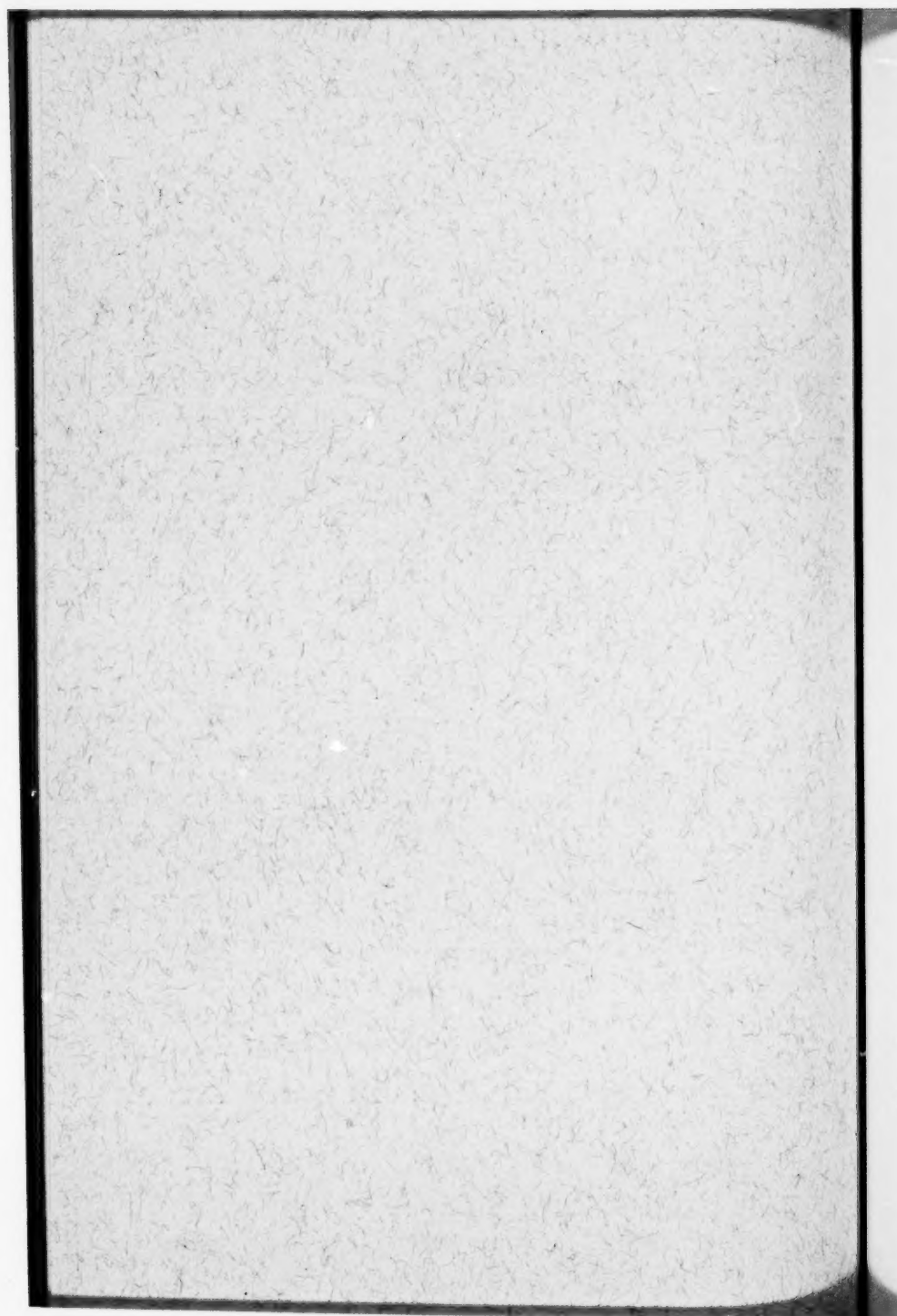
Petitioner,

vs.

BOARD OF DENTAL EXAMINERS, D. C., ET AL.

PETITION FOR WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE
DISTRICT OF COLUMBIA AND BRIEF IN SUP-
PORT THEREOF.

ALVIN L. NEWMYER,
Counsel for Petitioner.



INDEX.

SUBJECT INDEX.

	Page
Petition for writ of certiorari	1
Statement of case	1
Question involved	3
Statute involved	4
Reasons relied on for allowance of the writ	5
Prayer for writ	5
Brief in support of petition	7
Opinion below	7
Jurisdiction	7
Question presented (see petition)	7
Specification of errors	7
Argument	8
I. Regulation No. 7 is an unconstitutional limitation on petitioner's right to ad- vertise	8
II. Regulation No. 1 which places a limita- tion on the size of building signs is invalid	10
III. Petitioner's right to engage in truth- ful advertising was erroneously held by the court below to be governed by the decision of this Court in <i>Semler</i> <i>v. Oregon State Board of Dental Ex-</i> <i>aminers</i> , 294 U. S. 608, 79 L. Ed. 1086	12
Conclusion	15

CASES CITED.

<i>American Medical Association v. United States</i> , — U. S. —, 87 L. Ed. 348	14
<i>Semler v. Oregon State Board of Dental Exami-</i> <i>ners</i> , 294 U. S. 608, 79 L. Ed. 1086	5
<i>Smith v. Texas</i> , 233 U. S. 630, 58 L. Ed. 1129	12
<i>Wilshire, In re</i> , 103 Fed. 620	12

STATUTES CITED.

	Page
Act of June 6, 1892, 27 Stat. 42, c. 89; as amended June 7, 1924, 43 Stat. 599, c. 315 and July 2, 1940, 54 Stat. 716, c. 513	2
Act of July 2, 1940, 54 Stat. 716, c. 513	2
Act of July 2, 1940, 54 Stat. 716, c. 513, Section 11 (d) and (h)	3
Judicial Code, Section 240(a), 28 U. S. C. A. 347(a) ..	7

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BOARD OF DENTAL EXAMINERS, D. C., ET AL.

**PETITION FOR WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE
DISTRICT OF COLUMBIA.**

*To the Chief Justice of the United States and the Associate
Justices of the Supreme Court of the United States:*

Your petitioner, Samuel B. Johnston, respectfully shows
to this honorable court, as follows:

Petitioner is a practicing dentist in the District of Columbia where he has engaged in practice for more than twenty-five years. For many years prior to the passage of the Dental Act of 1940¹ he advertised in local newspapers, thereby informing the public as to the location of his office, concerning his rates for certain types of dental treatment

¹ Act of July 2, 1940, 54 Stat. 716, c. 513.

and that he gave free dental examinations. He never advertised anything that was false. His office is located on the second floor of a downtown building situated in a busy part of the city. On the outside walls of the building he has for many years maintained several signs, four feet by six feet in size, on which the lettering varies from four to eight inches in height. At the entrance of this building he displayed some of his sample laboratory work in a small show case.

Following the passage of the Dental Act of 1940, the appellees, constituting the Board of Dental Examiners, D. C.² appointed by the Commissioners of the District of Columbia, promulgated seven rules and regulations concerning the practice of dentistry (R. 2, 9, 10). These regulations purported to do the following: limit the size and number of signs that a dentist may display (Regulations 1 and 2 (R. 9)); limit the content and structure of such signs (Regulations 3, 4 and 5 (R. 9, 10)); and limit newspaper advertising to a single card not exceeding two and one-quarter inches in width and one inch in height (Regulation 7 (R. 10)). These regulations were promulgated by the Board on the basis that they were in furtherance of the authority delegated to the Board by the said Dental Act of 1940.

Under said Act and regulations petitioner was confronted with possible criminal prosecution and revocation of his license to practice if he continued to maintain the signs on the building where his office is located and by continuing to advertise in the local newspapers. In order to determine the validity of said Act and regulations, as applied to the petitioner's activities in the practice of dentistry, he filed suit in the District Court of the United States for the Dis-

² The Board was authorized by the Act of June 6, 1892, 27 Stat. 42, c. 89; as amended June 7, 1924, 43 Stat. 599, c. 315 and July 2, 1940, 54 Stat. 716, c. 513.

trict of Columbia for (1) a declaratory judgment to determine his right to engage in certain of the acts apparently prohibited by the Act and regulations, and (2) for injunctive relief against their threatened enforcement (R. 1-10). Petitioner contended that the Dental Act of 1940 was repugnant to the due process clause of the Fifth Amendment and that the regulations were invalid because (a) they bore no reasonable relation to the protection of public health or safety and (b) because they were indefinite, arbitrary and capricious and were designed to set up a standard of conduct for the pecuniary advantage of certain individuals engaged in the practice of dentistry to the exclusion of others, on grounds bearing no reasonable relation to the general public interest.

The District Court peremptorily ruled that the Act was valid (R. 15) and, after taking testimony bearing on the reasonableness of the regulations, ruled that the regulations were reasonable, valid and enforceable (R. 15, 16). Petitioner's complaint was accordingly dismissed (R. 16).

On appeal to the United States Court of Appeals for the District of Columbia the judgment was affirmed on January 18, 1943, in an opinion written by Mr. Justice Vinson (R. 18).

Question Involved.

The question involved is whether Section 11, paragraphs (d) and (h) of the Dental Act of 1940 and the regulations promulgated by the appellees are repugnant to the due process clause of the Fifth Amendment insofar as:

- (1) Any kind of truthful newspaper advertising that exceeds $2\frac{1}{4}$ inches by 1 inch in size is prohibited, and
- (2) The regulations provide an arbitrary and capricious limit on the size of signs which a dentist may maintain at his office location.

Statute Involved.

Paragraphs (d) and (h) of Section 11 of the Dental Act of 1940 provide as follows:

"Sec. 11. The District Court of the United States for the District of Columbia may revoke or suspend the license of any dentist in the District of Columbia upon proof satisfactory to said court—

(d) That the holder thereof is guilty of advertising professional superiority or the performance of professional services in a superior manner; advertising prices for professional service; advertising by means of large display, glaring light signs, or containing as a part thereof the representation of a tooth, teeth, bridgework, or any portion of the human head; employing or making use of solicitors or free publicity press agents directly or indirectly; or advertising any free dental work, or free examination; or advertising to guarantee any dental service or to perform any dental operation painlessly * * *

(h) That such holder is guilty of unprofessional conduct.

The following acts on the part of a licensed dentist are hereby declared to constitute unprofessional conduct:

- (1) Practicing while his license is suspended.
- (2) Willfully deceiving or attempting to deceive the Board or their agents with reference to any matter under investigation by the Board.
- (3) Advertising by any medium other than the carrying or publishing of a modest professional card or the display of a modest window or street sign at the licensee's office, which professional card or window or street sign shall display only the name, address, profession, office hours, telephone connections and, if

his practice is so limited, his specialty: Provided, That in case of announcement of change of address or the starting of practice, the usual size card of announcement may be used. The size of said cards or signs shall be designated by the Board."

A copy of the regulations promulgated by the appellees is set forth in the Record (R. 9, 10).

Reasons Relied On for Allowance of the Writ.

Petitioner relies on the following grounds why a writ of certiorari should be granted to review the decision of the United States Court of Appeals for the District of Columbia.

(1) The constitutional right to free speech is violated by the unreasonable limitation on the petitioner's right to engage in truthful advertising.

(2) The Board of Dental Examiners, D. C., an administrative body appointed pursuant to an Act of Congress, has adopted regulations which are arbitrary and capricious in relation to petitioner's practice of dentistry.

(3) The question presented involves the limits to be placed upon the decision of this Court in *Semler v. Oregon State Board of Dental Examiners*, 294 U. S. 608, 79 L. Ed. 1086.

Prayer.

Wherefore your petitioner prays the allowance of a writ of certiorari to the United States Court of Appeals for the District of Columbia in this case there entitled "*Samuel B. Johnston, appellant v. Board of Dental Examiners, D. C. et al., appellees, No. 8076*", that said cause may be reviewed and determined by this Court, and that the judgment of

the United States Court of Appeals for the District of Columbia may then be reversed.

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Petitioner,

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